

WILD ANIMALS IN CIRCUSES (NO. 2) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Wild Animals in Circuses (No. 2) Bill as brought from the House of Commons on 5 June 2019 (HL Bill 180).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill makes it an offence for an operator of a travelling circus in England to use a "wild animal" in the circus. Wild animals are defined in the Bill as animals of a kind which are not commonly domesticated in Great Britain.
- 2 Operators of travelling circuses which currently use wild animals will have until 20 January 2020 to stop doing so, from which point it becomes an offence for the operator of the travelling circus to use the wild animal in exhibition or performance.

Policy background

- 3 The Bill takes forward the Government's policy in relation to the use of wild animals in travelling circuses as set out in the Written Ministerial Statements on 1 March¹ and 12 July 2012.² The Government stated that it intended to pursue a ban on ethical grounds on the use of wild animals in travelling circuses in England. In the absence of any compelling scientific evidence that a ban could be justified on welfare grounds, such a ban requires primary legislation. As primary legislation would have taken time to secure, as an interim measure the Government introduced a licensing scheme using powers available under the Animal Welfare Act 2006. The Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 came into force on 20 January 2013. Only two travelling circuses have been licensed under the 2012 Regulations to use wild animal acts.
- 4 In April 2013, the Government published a draft Wild Animals in Circuses Bill for pre-legislative scrutiny. The draft Bill was considered by the House of Commons' Environment, Food and Rural Affairs Select Committee who published its report in July 2013. The Government responded in October 2013. The Government did not accept the main Committee recommendation that the ban should only apply to some wild animals, rather than all wild animals. Since the Government response, no parliamentary time has been found to introduce the Bill.

Legal background

- 5 The use of wild animals in circuses in England is currently regulated through the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012 (SI 2012/2932). These Regulations will expire in January 2020.
- 6 The Bill contains a consequential amendment to the Dangerous Wild Animals Act 1976 (c. 38). Section 5(2) of that Act exempts dangerous wild animals kept in a circus from having to be licensed. This Bill removes that exemption in England and Scotland. If the prohibition contained in the draft Bill comes into force, none of the vertebrate animals listed in the Dangerous Wild Animals Act 1976 could be used in circuses in England in any event. The Wild Animals in Travelling Circuses (Scotland) Act 2018 already prohibits the use of wild animals in travelling circuses in Scotland.

¹ HC Hansard 1 March 2012 Column 41 WS

² HC Hansard 12 July 2012 Column 43 WS

Territorial extent and application

- 7 Clause 4 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a bill can be different from its application. Application is about where a bill produces a practical effect. This Bill extends to England and Wales but applies to England only, with the exception of the consequential amendment in section 3 which extends and applies to Scotland.
- 8 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The matters covered by this Bill are within the legislative competence of the Scottish Government, the National Assembly for Wales, and the Northern Ireland Assembly. A legislative consent motion is required for the consequential amendment in section 3 which extends to Scotland.
- 9 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom as the Bill is currently drafted. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Prohibition on use of wild animals in travelling circuses in England

- 10 Subsection (1) sets out the central prohibition in the Bill which provides that circus operators are no longer allowed to use wild animals in their travelling circus in England.
- 11 Subsection (2) clarifies that “use” of a wild animal in a circus extends to a performance by the animal and any exhibition of a wild animal as part of the circus. For example, performance would include a parade of animals in a circus ring and an exhibition would include the display of a lion in a cage.
- 12 Subsection (3) establishes that a circus operator is guilty of an offence if that person uses a wild animal in a travelling circus in England in breach of subsection (1). A person guilty of such an offence is liable on summary conviction to a fine of any amount.
- 13 Subsection (4) provides for individual liability in some cases where there is also corporate liability.
- 14 Subsection (5) contains definitions of expressions used in the Bill. A “circus operator” is defined as the owner of the circus or any other person with overall responsibility for the operation of the circus except that, if no such person is present in the United Kingdom, the circus operator will be the person in the United Kingdom who has ultimate responsibility for the operation of the circus. A “wild animal” is defined as any animal of a kind not commonly domesticated in Great Britain, with “animal” taking the same meaning as in section 1(1) of the Animal Welfare Act 2006. “Travelling circus” takes its ordinary meaning.

Clause 2: Inspections

- 15 The Schedule (which makes provisions for inspections under the Bill) has effect.

Clause 3: Consequential amendment

- 16 Clause 3 makes a consequential amendment to the Dangerous Wild Animals Act 1976 in order to remove the current exemption in section 5(2) from the requirement to have a licence to keep such animals. The exemption under the Act will remain for circuses in Wales.

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Clause 4: Extent, commencement and short title

17 This clause provides that the Bill will come into force on 20 January 2020.

Schedule – Inspections

- 18 The Schedule makes provision for the appointment of inspectors and specifies the powers and duties of those inspectors when exercising powers of entry, inspection or search under the Bill.
- 19 Paragraph 1 of the Schedule permits the Secretary of State to appoint persons as inspectors for the purposes of the Bill.
- 20 Paragraph 2 confers a power to enter premises, other than premises used only as a dwelling, to carry out the functions set out in this Schedule. The inspector must have reasonable grounds for suspecting that an offence under clause 1 is being, has been, or is about to be committed on the premises or that evidence of the commission of such an offence may be found there.
- 21 Paragraph 3 provides that a justice of the peace may issue a warrant authorising an inspector to enter premises used as a dwelling to search for evidence of an offence. It also sets out the matters that must be satisfied before a warrant may be granted.
- 22 Paragraph 4 requires an inspector, on request, to produce evidence of identity before exercising the power of entry and to state for what purpose the power is being exercised. If entry is under a warrant, the inspector is required to supply a copy of the warrant or to leave such a copy on the premises.
- 23 Paragraph 5 requires an inspector to exercise a power of entry at a reasonable time unless the officer believes that, by waiting for that reasonable time, the purpose for requiring entry and inspection may be thwarted.
- 24 Paragraph 6 allows an inspector to use reasonable force where necessary to exercise a power of entry and to take on to the premises up to two other persons and anything necessary (including equipment and materials) to assist them in their duties. The assistants could include specialists, for example a zoological specialist to help identify animals, or police constables to help keep the peace when necessary to enable an inspector to conduct his or her work.
- 25 Paragraph 7 outlines the powers of inspection, search and seizure available to an inspector when exercising a power of entry under paragraph 2 or 3. This paragraph does not include a power to seize a wild animal. Where any item has been seized under paragraph 7(k), paragraph 9(2) requires the inspector or their assistant, on request, to provide a record of the item seized to whoever had possession or control of the item before it was seized.
- 26 Paragraph 7(d) permits an inspector to require any person on the premises to provide him or her with reasonable assistance. This obligation may be needed, for example, to enable access to an animal cage, handle an animal (to be able to take samples) or to move a vehicle.
- 27 The power provided by paragraph 8 enables any person brought to the premises by the inspector to exercise the inspector's powers under paragraph 7, but only under the inspector's direct supervision.
- 28 Paragraph 10 creates an offence of failing to comply with a requirement reasonably made by an inspector, preventing any other person from so doing, or intentionally obstructing an inspector when the inspector is carrying out their duties under the Bill. The offence also applies to the assistants of inspectors. This is a summary offence for which the penalty is a fine of any amount.

- 29 Paragraph 11 protects inspectors and their assistants from liability in any civil and criminal proceedings for anything done or not done as a result of carrying out their duties under the Bill. This exemption from liability does not apply where an inspector or their assistant acts in bad faith or if there were no reasonable grounds to act in such manner.

Commencement

- 30 The Bill will come into force on 20 January 2020.

Financial implications of the Bill

- 31 Given the small scale of the industry, and the visibility of any operator seeking to contravene the ban, the Government does not anticipate any changes in public sector expenditure or manpower as a result of the Wild Animals in Circuses (No. 2) Bill.

Parliamentary approval for financial costs or for charges imposed

- 32 This Bill does not require a a Ways and Means resolution, in which the Commons give consent to parts of a Bill that involve taxes or other charges being made on the public.

Compatibility with the European Convention on Human Rights

- 33 The Government has examined the compatibility of the provisions in the Bill with the Convention. In particular, the Government has considered potential arguments that a ban on the use of a wild animal in a travelling circus amounts to a deprivation of a possession or is a disproportionate interference with the rights of that animal's owner under Article 1 of Protocol 1 to the Convention. The Government believes that the Bill's provisions are compatible with the Convention. The ban would not require any change of ownership of a wild animal or otherwise amount to a deprivation of a possession. Any interference with rights under Article 1 of Protocol 1 to the Convention is justified.

Annex A – Territorial extent and application in the United Kingdom

34 The Bill would form part of the law of, and therefore, with the exception of the consequential amendment in section 3 which also extends to Scotland, extend to, England and Wales only. The Bill provides that the provisions of the Bill would apply to England only, with the exception of the consequential amendment in section 3 which applies to Scotland.³

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	Yes	Yes	Yes	No
Clause 2	Yes	No	No	No	Yes	Yes	Yes	No
Clause 3	Yes	No	Yes	No	N/A	N/A	N/A	N/A
Clause 4	Yes	No	Yes	No	N/A	N/A	N/A	N/A
Schedule	Yes	No	No	No	Yes	Yes	Yes	No

Subject matter and legislative competence of devolved legislatures

35 The devolved legislatures could make corresponding provision (legislate to do in their territory what is being put forward in this Bill as regards England). The Welsh Assembly has corresponding competence in relation to Wales (the matter not being reserved by Schedule 7A to the Government of Wales Act 2006), Scotland has corresponding competence in relation to Scotland (the matter not being reserved by Schedule 5 to Scotland Act 1998), and Northern Ireland has corresponding competence in relation to Northern Ireland (the matter not being excepted or reserved by Schedules 2 and 3 of the Northern Ireland Act 1998 respectively). An example of an Act passed by a devolved legislature in relation to the subject matter of this Bill would be the Wild Animals in Travelling Circuses (Scotland) Act 2018.

³ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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